

**Remarks**

This Application has been carefully reviewed in light of the Office Action mailed November 17, 2005. Applicants believe all claims are allowable over the Examiner's rejections without amendment and respectfully provide the following remarks. Applicants respectfully request reconsideration and allowance of all pending claims.

**I. The Finality of the Office Action must be Withdrawn**

Applicants respectfully submit that the finality of the current Office Action (the "Current Office Action") must be withdrawn for two reasons, each of which are discussed below.

First, according to the Current Office Action, the Examiner based the finality of the Office Action on the following: "Applicants' amendment necessitated the new ground(s) of rejection presented in this Office Action. Accordingly, **THIS ACTION IS MADE FINAL.**" (Current Office Action, Page 22) (emphasis in original) Applicants note that while independent Claim 1 was amended in the previous Response, independent Claims 39 and 51 were not amended. In this regard, the M.P.E.P. provides the following:

[A] second or any subsequent action on the merits in any application or patent undergoing reexamination proceedings *will not be made final* if it includes a rejection, on newly cited art, other than information submitted in an Information Disclosure Statement filed under 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p), *of any claim not amended by applicant or patent owner despite of the fact that other claims may have been amended to require newly cited art.*

M.P.E.P. § 706.07(a) (emphasis added). The Current Office Action raises new grounds of rejection against unamended independent Claims 39 and 51. Thus, pursuant to M.P.E.P. 706.07(a), and despite the fact that Applicants did amend independent Claim 1 in the previous Response, the Current Office Action should not be a Final Office Action.

Second, while the above-discussed reason is alone sufficient to require withdrawal of the finality of the Current Office Action, the finality of the Current Office Action should also be withdrawn because the Office Action mailed November 17, 2005 (the "Previous Office Action"), which was the first Office Action received for this Application, was inadequate. In particular, in the Previous Office Action, the Examiner did not consider all of the limitations

recited in Applicants' claims. For example, with respect to independent Claim 1 and its dependent claims, the Examiner acknowledged that the bulk of the limitations recited in independent Claim 1 were not given any patentable weight. (Previous Office Action, Page 2) Applicants discussed why this was inappropriate in the Previous Office Action and incorporate by reference those remarks. (See Previous Response, Pages 13-14) Additionally, the M.P.E.P. provides that "[s]witching from one subject matter to another in the claims presented by applicant in successive amendments, or from one set of references to another by the examiner in rejecting in successive actions claims of substantially the same subject matter, will alike tend to defeat attaining the goal of reaching a clearly defined issue for an early termination, i.e., either an allowance of the application or a final rejection." M.P.E.P. 706.07 Applicants respectfully submit that the Examiner's switching between references, coupled with the fact that the Examiner did not consider all of limitations recited in Claim 1 in the Previous Office Action, should further preclude the issuance of a Final Office Action.

For at least these reasons, Applicants respectfully request that the Examiner withdraw the finality of the Current Office Action and consider the arguments made in this Response.

## **II. The Claims are Allowable over *Judkins***

The Examiner rejects Claims 1-62 under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,763,104 to Judkins, et al. ("*Judkins*"). Applicants respectfully disagree.

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987); M.P.E.P. § 2131. In addition, "[t]he elements must be arranged as required by the claim." *Richardson v. Suzuki Motor Co.*, 9 U.S.P.Q.2d 1913, 1920 (Fed. Cir. 1989); *In re Bond*, 15 U.S.P.Q.2d 1566 (Fed. Cir. 1990); M.P.E.P. § 2131. As illustrated below, *Judkins* fails to disclose, either expressly or inherently, each and every limitation recited in Applicants' claims, as is required under the M.P.E.P. and governing Federal Circuit cases.

**A. Independent Claim 1 and its Dependent Claims are Allowable over *Judkins***

At a minimum, *Judkins* fails to disclose, teach, or suggest each of the following limitations recited in independent Claim 1:

- a client monitor operable to, when executed by at least one of the one or more processing units, generate a presence message signifying the presence of a client on a network associated with the system, wherein the presence message comprises a presence type and a client identity; and
- a plan manager operable to, when executed by at least one of the one or more processing units:
  - receive the presence message from the client monitor;
  - retrieve a plan template in response to receiving the presence message, wherein the plan template is retrieved based upon the client identity and the presence type; and
  - create a recording plan associated with the client based at least in part upon the plan template.

For example, *Judkins* fails to disclose, teach, or suggest “a client monitor operable to, when executed by at least one of the one or more processing units, generate a presence message signifying the presence of a client on a network associated with the system, wherein the presence message comprises a presence type and a client identity,” as recited in Claim 1. The Examiner argues that the following sentence from *Judkins* allegedly discloses these limitations: “The ACD server administrator 126 also contains resource utilization tools (FIG. 19) that help a user monitor system memory use and availability, which clients are logged in, CTI link messages per minute, historical memory loads on the system.” (See Current Office Action, Page 3 citing *Judkins*, 7:38-42) Among other distinctions, while the cited portion of *Judkins* discloses that the resource utilization tools help a user monitor which users are logged in, nowhere does the cited portion disclose, teach, or suggest a “***presence message*** [that] comprises ***a presence type*** and ***a client identity***,” as recited in Claim 1.

As another example, *Judkins* fails to disclose, teach, or suggest “a plan manager that is operable to “receive the presence message from the client monitor,” as recited in Claim 1. The Examiner argues that the following sentence from *Judkins* allegedly discloses these limitations: “Messages are received from these systems and are translated back into a published format through the same mechanisms.” (Current Office Action, Page 3 citing

*Judkins*, 6:50-52) Applicants respectfully disagree. First, at least because *Judkins* fails to disclose, teach, or suggest a presence message that comprises a presence type and a client identify, as recited in Claim 1, *Judkins* necessarily fails to disclose, teach, or suggest a plan manager that is operable to “receive the presence message from the client monitor,” as recited in Claim 1. Second, the fact that *Judkins* discloses that messages can be received in its system fails, at a minimum, to disclose, teach or suggest a plan manager that is operable to receive the specific type of message recited in Claim 1 -- the presence message from the client monitor.

As another example, *Judkins* fails to disclose, teach, or suggest a plan manager that is operable to “retrieve a plan template in response to receiving the presence message, wherein the plan template is retrieved based upon the client identity and the presence type,” as recited in Claim 1. As allegedly disclosing these limitations, the Examiner cites the following sentence from *Judkins*: “The call center system 100 includes an Interactive Voice Response (IVR) server 108, which also doubles as a call logger/recorder.” (See Current Office Action, Page 3 citing *Judkins*, 5:35-37) Applicants respectfully disagree.

First, at least because *Judkins* fails to disclose, teach, or suggest a presence message that comprises a presence type and a client identity, as recited in Claim 1, *Judkins* necessarily fails to disclose, teach, or suggest a plan manager that is operable to “retrieve a plan template in response to receiving the presence message, ***wherein the plan template is retrieved based upon the client identity and the presence type***,” as recited in Claim 1. Second, nowhere does this cited portion disclose, teach, or suggest retrieving any plan template in response to receiving a presence message, let alone retrieving the plan template based upon the client identity and the presence type. Instead, the cited portion of *Judkins* merely discloses that its call center system includes an IVR server that doubles as a call logger/recorder.

As another example, *Judkins* fails to disclose, teach, or suggest a plan manager that is operable to “create a recording plan associated with the client based at least in part upon the plan template,” as recited in Claim 1. The Examiner argues that the following sentence from *Judkins* allegedly discloses these limitations: “A user would set up different route ID’s based on needs, and then apply each route ID to one or more DNIS numbers, and to use these route

ID's as "schedules" about when to be opened or closed." (See Current Office Action, Page 3 citing *Judkins*, 18:39-42) Applicants respectfully disagree.

First, at least because *Judkins* fails to disclose, teach, or suggest a plan manager that is operable to "retrieve a plan template in response to receiving the presence message," as recited in Claim 1, *Judkins* necessarily fails to disclose, teach, or suggest that the plan manager is operable to "create a recording plan associated with the client based at least in part upon the plan template," as recited in Claim 1. Second, nowhere does the cited portion of *Judkins* disclose, teach, or suggest that the routing schedules disclosed in *Judkins* and referenced by the Examiner have anything to do with recording, let alone a plan manager that is operable to "create a recording plan associated with the client based at least in part upon a plan template," as recited in Claim 1.

For at least these reasons, Applicants respectfully request reconsideration and allowance of independent Claim 1 and its dependent Claims.

**B. Independent Claims 39 and 51 and their Dependent Claims are Allowable over *Judkins***

*Judkins* also fails to disclose, teach, or suggest various limitations recited in independent Claim 39 (which Applicants discuss as an example). At a minimum, *Judkins* fails to disclose, teach, or suggest a processor coupled to a memory [that is operable to store a plurality of plan templates and client information] and operable to:

- receive a presence message signifying the presence of a client on a network associated with the system, the presence message comprising a presence type and a client identity;
- retrieve a plan template from the memory in response to receiving the presence message, wherein the plan template is retrieved based upon the client identity and the presence type; and
- create a recording plan associated with the client based at least in part upon the plan template.

For example, *Judkins* fails to disclose, teach, or suggest a memory that is operable to store a plurality of plan templates and client information, as recited in Claim 39. The Examiner argues that the following sentence from *Judkins* allegedly discloses these limitations: "The ACD server administrator 126 also contains resource utilization tools (FIG.



19) that help a user monitor system memory use and availability, which clients are logged in, CTI link messages per minute, historical memory loads on the system.” (See Current Office Action, Page 15 citing *Judkins*, 7:38-42) Among other distinctions, while the cited portion of *Judkins* discloses that the resource utilization tools help a user monitor which users are logged in, nowhere does the cited portion disclose, teach, or suggest a memory that is operable to store a plurality of plan templates and client information, as recited in Claim 39.

As another example, *Judkins* fails to disclose, teach, or suggest a processor that is operable to “receive a presence message signifying the presence of a client on a network associated with the system, the presence message comprising a presence type and a client identity,” as recited in Claim 39. The Examiner argues that the following sentence from *Judkins* allegedly discloses these limitations: “Messages are received from these systems and are translated back into a published format through the same mechanisms.” (Current Office Action, Page 15 citing *Judkins*, 6:50-52) Applicants respectfully disagree. First, at least because *Judkins* fails to disclose, teach, or suggest a presence message that comprises a presence type and a client identify, as recited in Claim 39, *Judkins* necessarily fails to disclose, teach, or suggest a processor that is operable to “receive a presence message signifying the presence of a client on a network associated with the system, the presence message comprising a presence type and a client identity,” as recited in Claim 39. Second, the fact that *Judkins* discloses that messages can be received in its system fails, at a minimum, to disclose, teach or suggest a processor that is operable to receive the specific type of message recited in Claim 39 -- a presence message signifying the presence of a client on a network associated with the system and comprising a presence type and a client identity.

As another example, *Judkins* fails to disclose, teach, or suggest a processor that is operable to “retrieve a plan template from the memory in response to receiving the presence message, wherein the plan template is retrieved based upon the client identity and the presence type,” as recited in Claim 39. As allegedly disclosing these limitations, the Examiner cites the following sentence from *Judkins*: “The call center system 100 includes an Interactive Voice Response (IVR) server 108, which also doubles as a call logger/recorder.” (See Current Office Action, Page 15 citing *Judkins*, 5:35-37) Applicants respectfully disagree.

First, at least because *Judkins* fails to disclose, teach, or suggest a presence message that comprises a presence type and a client identity, as recited in Claim 39, *Judkins* necessarily fails to disclose, teach, or suggest a processor that is operable to “retrieve a plan template from the memory in response to receiving the presence message, ***wherein the plan template is retrieved based upon the client identity and the presence type,***” as recited in Claim 39. Second, nowhere does this cited portion disclose, teach, or suggest retrieving any plan template in response to receiving a presence message, let alone retrieving the plan template based upon the client identity and the presence type. Instead, the cited portion of *Judkins* merely discloses that its call center system includes an IVR server that doubles as a call logger/recorder.

As another example, *Judkins* fails to disclose, teach, or suggest a processor that is operable to “create a recording plan associated with the client based at least in part upon the plan template,” as recited in Claim 39. The Examiner argues that the following sentence from *Judkins* allegedly discloses these limitations: “A user would set up different route ID’s based on needs, and then apply each route ID to one or more DNIS numbers, and to use these route ID’s as “schedules” about when to be opened or closed.” (*See* Current Office Action, Page 16 citing *Judkins*, 18:39-42) Applicants respectfully disagree.

First, at least because *Judkins* fails to disclose, teach, or suggest a processor that is operable to “retrieve a plan template from the memory in response to receiving the presence message,” as recited in Claim 39, *Judkins* necessarily fails to disclose, teach, or suggest that the processor is operable to “create a recording plan associated with the client based at least in part upon the plan template,” as recited in Claim 39. Second, nowhere does the cited portion of *Judkins* disclose, teach, or suggest that the routing schedules disclosed in *Judkins* and referenced by the Examiner have anything to do with recording, let alone a processor that is operable to “create a recording plan associated with the client based at least in part upon a plan template,” as recited in Claim 39.

For at least these reasons, Applicants respectfully request reconsideration and allowance of independent Claim 39 and its dependent claims.

For at least certain reasons analogous to those discussed above with reference to independent Claim 39, Applicants respectfully submit that *Judkins* fails to disclose, teach, or suggest various limitations recited in independent Claim 51. Thus, Applicants respectfully request reconsideration and allowance of independent Claim 51 and its dependent claims.

**III. No Waiver**

All of Applicants' arguments and amendments are without prejudice or disclaimer. Additionally, Applicants have merely discussed example distinctions from the reference cited by the Examiner. Other distinctions may exist, and Applicants reserve the right to discuss these additional distinctions in a later Response or on Appeal, if appropriate. By not responding to additional statements made by the Examiner, Applicants do not acquiesce to the Examiner's additional statements. The example distinctions discussed by Applicants are sufficient to overcome the Examiner's rejections.



**Conclusion**

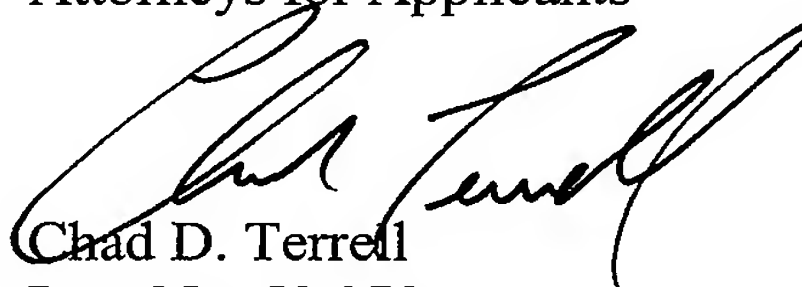
Applicants have made an earnest attempt to place this case in condition for allowance. For at least the foregoing reasons, Applicants respectfully request full allowance of all pending claims.

If the Examiner feels that a telephone conference would advance prosecution of this Application in any manner, the Examiner is invited to contact Chad D. Terrell, Attorney for Applicants, at the Examiner's convenience at (214) 953-6813.

Although Applicants believe no fees are due, the Commissioner is hereby authorized to charge any fees or credit any overpayments to Deposit Account No. 02-0384 of Baker Botts L.L.P.

Respectfully submitted,

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